IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5323 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARESH @ NARESH NARANDAS SINDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5323 of 2001

MS SUBHADRA G PATEL for Petitioner

MR SS PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 26/11/2001

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act

of 1985') by the order dated 11-5-2001 passed by the District Magistrate, Junagadh, and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard Ms.Subhadra Patel, learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, statements of four independent witneses have been recorded by the Police Sub-Inspector, Crime Branch, Junagadh on 27-4-2001 and same verified by the Dy.S.P. on 2-5-2001. However, the detaining authority has verified the statements of witnesses Nos.1 and 2 only and not verified the statements of witnesses Nos.3 and 4. In this connection, she has drawn my attention towards the case of Shankar Vishnubhai Sindhi Vs. Commissioenr of Police, Baroda City, Baroda, 2000(1) G.L.H. 443 more particularly para 9 which runs as under:

> "In our opinin, in the instant case, since the third statement was not verified, the subjective satisfaction was vitiated and the order deserves to be quashed and set aside."

It is further submitted that no affidavit has been filed by the State authority stating the reasons for not verifying the statements of witnesses Nos.3 and 4. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detentiion is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

4. It is to be noted that order of detention dated 11-5-2001 passed against a co-detenu namely, Kishan Sidi Kharva, the petitioner of Special Civil Application No.5278 of 2001 has been quashed by this Court. In view of the fact that no affidavit has been filed either by the detaining authority or by the State authority explaining the reasons for not verifying the statements of two witnesses and also in view of the fact that order of detention passed against co-detenu was quashed by this Court, the order of detention passed against the present detenu also requires to be quashed and set aside being illegal and unsustainable.

5. The petition is allowed. The impugned order of detention dated 11-5-2001 passed against the detenu is hereby quashed and set aside. The detenu-Haresh Naraesh Narandas Sindhi is set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

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